



**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION**



**ENVIRONMENTAL USE CONTROL PROGRAM
FACT SHEET**

What is an Environmental Use Control?

An Environmental Use Control (EUC) is a legal mechanism for applying restrictions, prohibitions, and conditions on land use for a property that has environmental contamination at levels prohibiting unrestricted use; that is, a property with contaminant concentrations that exceed residential standards. An EUC can be voluntarily applied to a property by the landowner to assure adequate protection of public health and the environment from contamination on the subject property. The protection offered by an EUC can provide a landowner relief from environmental liability concerns, making property more attractive to redevelopment or prospective buyers.

Why are EUCs needed?

EUCs are necessary when residual contamination (contamination remaining on the property following cleanup) prohibits unrestricted use of the property. EUCs provide protection from exposure to residual contamination that remains in place on a subject property. For example, the conditions of an EUC may prohibit groundwater beneath a property from being used as drinking water, or require the maintenance of an engineered barrier, such as a cap, to prevent exposure to contaminants. Violation of conditions established through an EUC could create an unacceptable risk.

In summary, EUCs provide landowners with a way to achieve site closure by addressing remaining environmental concerns caused by residual contamination.

What are the benefits of EUCs?

EUCs allow for the development and productive use of a contaminated property where cleanup to levels allowing unrestricted use is not economically or technically feasible. In most cases, development of a property should be achievable within the framework of EUCs, allowing a property which was previously undeveloped or abandoned due to environmental concerns to be put to beneficial and productive use and/or be made more attractive to prospective buyers. EUCs also protect the seller of a property by informing future landowners of the use restrictions necessary to mitigate the environmental liability concerns associated with a property.

Can I use an EUC to address contamination on my property?

EUCs can be used to address environmental concerns if a property is enrolled in a KDHE environmental program, the department has approved use of EUCs at the property, and the cleanup objectives are based on any of the following:

- Non-residential land use
- Protective structures (i.e., engineered barriers such as caps, berms, surface controls, etc.)
- Prohibiting activities on the property (i.e., no water wells, excavation, trenching, etc.)
- Any combination of the above

A landowner does not need an EUC when contamination is cleaned up to residential standards for unrestricted use.

Are EUCs permanent land use restrictions?

Yes, an EUC runs with the property and is binding on the landowner and any subsequent owners, lessees, and other users of the property. However, the landowner may conduct additional investigative and/or remedial activities in the future to reduce or eliminate the remaining contaminants posing a risk to human health or the environment. Once such work is completed, a request can be made to the department to remove or modify the EUC.

What conditions may be imposed by EUCs?

Some conditions imposed by EUCs could be to:

- Restrict future land use to industrial/commercial purposes
- Prohibit installation of drinking water wells on the property
- Limit or prohibit digging or other types of excavation activities on the property
- Require erosional controls on the property
- Limit the type of vegetation to be grown on a subject property
- Require maintenance of a protective structure or other engineered barrier

EUCs serve to prevent exposure to remaining contaminants, but are site-specific and depend on multiple factors. These factors may include:

- Amount and type of contamination left on the property
- Location of contamination in relation to other land uses
- Potential migration pathways or routes of exposure
- Geology of the site

How much does an EUC cost?

The cost of an EUC is based upon the property size, contaminant mobility/toxicity, maintenance requirements, and inspection frequency. KDHE will either request a one-time payment that will not exceed \$10,000, or a long-term care agreement will be negotiated to provide the funding necessary for maintaining the EUC.

My property is already zoned commercial, so should I apply for an EUC restricting the property to commercial/industrial use?

An EUC from the department is not the same as a local commercial zoning ordinance. Local zoning ordinances do not offer the same health protection because residential use of commercially zoned property is not necessarily prohibited. Restricting the land use to commercial/industrial property under an EUC means that the property cannot be used for residential purposes.

"Residential property" as defined by existing regulation (Kansas Administrative Regulations K.A.R. 28-71-1(u)) means any property currently used or proposed for use as one of the following: (1) a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or (2) a public use area, including a school, educational center, day care center, playground, unrestricted outdoor recreational area, or park.

Where can I get more information about EUCs?

Contact Environmental Use Control staff at (785) 296-1673 for more information regarding EUCs or an application to participate in the EUC Program.